

The Commonwealth of Massachusetts

Decision mailed: 4/9/10
Civil Service Commission

03

MICHAEL TOWNSLEY,
Appellant

v.

**TOWN OF
GREENFIELD,**
Respondent

CIVIL SERVICE COMMISSION
One Ashburton Place: Room 503
Boston, MA 02108
(617) 727-2293

Case No.: D-07-343

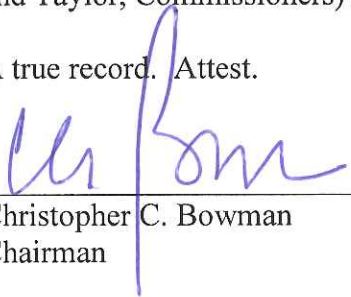
DECISION

After careful review and consideration, the Civil Service Commission voted at an executive session on April 8, 2010 to acknowledge receipt of the report of the Administrative Law Magistrate dated January 26, 2010. The Commission received the comments of the Appellant on February 25, 2010. The Commission received the comments of the Respondent on March 23, 2010. The Commission voted to adopt the findings of fact and the recommended decision of the Magistrate therein.

A copy of the Magistrate's report is enclosed herewith. The Appellant's appeal is hereby *dismissed*.

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, Stein, and Taylor, Commissioners) on April 8, 2010.

A true record. Attest.



Christopher C. Bowman
Chairman

Either party may file a motion for reconsideration within ten days of the receipt of a Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(I), the motion must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the Commission's order or decision.

Notice to:

Jeffrey S. Morneau, Esq. (for Appellant)
Layla G. Taylor, Esq. (for Appointing Authority)
Richard C. Heidlage, Esq. (DALA)



THE COMMONWEALTH OF MASSACHUSETTS

DIVISION OF ADMINISTRATIVE LAW APPEALS

98 NORTH WASHINGTON STREET, 4TH FLOOR

BOSTON, MA 02114

RICHARD C. HEIDLAGE
ACTING CHIEF ADMINISTRATIVE MAGISTRATE

TEL: 617-727-7060
FAX: 617-727-7248

January 26, 2010

Christopher C. Bowman, Chairman
Civil Service Commission
One Ashburton Place, Room 503
Boston, MA 02108

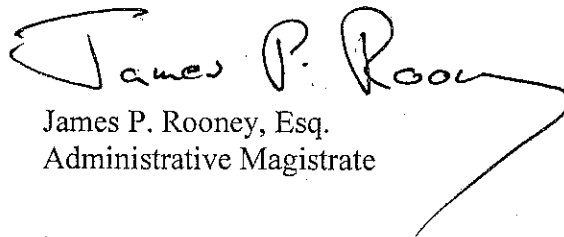
Re: Michael Townsley v. Town of Greenfield
DALA Docket No. CS-08-438

Dear Chairman Bowman:

Enclosed please find the Recommended Decision that is being issued today. The parties are advised that, pursuant to 801 CMR 1.01(11)(c)(1), they have thirty days to file written objections to the decision with the Civil Service Commission. The written objections may be accompanied by supporting briefs.

If either party files written objections to the recommended decision, the opposing party may file a response to the objections within 20 days of receipt of a copy of the objections

Sincerely,


James P. Rooney, Esq.
Administrative Magistrate

Enclosure

cc: Jeffrey S. Morneau, Esq.
Layla G. Taylor, Esq.

RECEIVED
JAN 28 A 9 11
OFFICE OF THE CHIEF ADMINISTRATIVE MAGISTRATE

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Civil Service Commission

Appeal of:

Michael Townsley,
Appellant

v.

Docket No. CS-08-438

Town of Greenfield,
Appointing Authority

Appearance for Appellant:

Jeffrey S. Morneau, Esq.
Donohue, Hyland & Donohue
1707 Northampton Street
Holyoke, MA 01040

Appearance for Appointing Authority:

Layla G. Taylor, Esq.
Sullivan, Hayes & Quinn
One Monarch Place, Suite 1200
Springfield, MA 01144

Administrative Magistrate:

James P. Rooney, Esq.

Summary

After a hearing, the Town of Greenfield has shown just cause to demote Michael Townsley from captain of the Fire Department to private for failing to fulfill some of the essential functions expected of a captain.

RECOMMENDED DECISION

Michael Townsley timely appealed under the provisions of M.G.L. c. 31, § 43 an October 1, 2007 decision by the Town of Greenfield demoting him from a fire captain to a line firefighter. Joint Ex. 28. I held a hearing on the appeal over the course of four days. I began the hearing on

RECEIVED
JUN 29 A 9 11
OFFICE OF THE CLERK
CIVIL SERVICE COMMISSION

July 16, 2008 at the offices of the Division of Administrative Law Appeals (DALA) in Boston. I made three tapes of that day's hearing. I held three subsequent days of hearing, August 7 and 8, 2008 and October 16, 2008, at the Greenfield Police Department headquarters in Greenfield. These hearings were transcribed by a court reporter.

The parties jointly submitted 30 exhibits, all of which I admitted into evidence. Townsley submitted two additional exhibits and the Town ten additional exhibits, all of which I admitted. The parties also submitted a stipulation of agreed facts. At the hearing, I heard testimony from Townsley, Christine Forgey, the mayor of the Town of Greenfield, Mark H. Cogswell, Acting Chief of the Greenfield Fire Department, Robert A. Strahan, Deputy Chief of the Greenfield Fire Department, Captain Clark Seaman of the Greenfield Fire Department, Greenfield firefighters Kyle Phelps and John Lyford, retired Greenfield firefighter Dale Mathey, and Diane Marie Lively, the Chief's former assistant. Following the hearing, the parties submitted an additional stipulation concerning the nature of the discipline hearing before the mayor. The record closed on January 27, 2009 with the submission of post-hearing briefs.

Findings of Fact

Based on the testimony and evidence presented and reasonable inferences from it, I make the following findings of fact:

Fire Department Organization

1. The Town of Greenfield Fire Department consists of a chief, a deputy chief, a fire prevention captain and five groups of firefighters, four of which are made up of full time firefighters. Each of these groups has a captain who is in charge of six firefighters, who are sometimes referred to as privates. Each group also has a "senior man" who assumes the

captain's role when the captain is absent. Cogswell testimony. The Fire Department has Rules and Regulations that contain both job descriptions and work rules. The Department has since 2006 promulgated standard operating procedures (SOPS) that have been developed by management to explain what is expected of Department personnel in specific situations.

Stipulation and Joint Ex. 2. Firefighters through the rank of captain are members of Greenfield Permanent Firefighters local #2548 of the International Association of Firefighters and work under the terms of a collective bargaining agreement between Greenfield and the union.

Cogswell testimony and Joint Ex. 1. Once every month, the Chief holds a staff meeting with the Deputy Chief, the captains, and the senior men. Cogswell testimony.

2. Michael Townsley became a permanent firefighter for Greenfield in March 1997. He was promoted to captain on November 1, 2001 and commanded fire group 3. Stipulation; Cogswell and Townsley testimony. As a captain, he was responsible "[f]or the direction and supervision of a group of Fire Department personnel in all phases of firefighting activity and related activities." He was also to "[m]aintain discipline and harmonious personnel relations" and "[h]andle complaints with limits of established practice." Joint Ex. 3. The Chief must approve discipline imposed by a captain. Cogswell testimony.

3. The record does not reflect any discipline imposed on Townsley from the time he became captain until 2007.

Townsley Performance Evaluation

4. Mark Cogswell, who became Acting Chief of the Greenfield Fire Department in 2005, negatively appraised Townsley's performance in for the year 2006. In an employee appraisal dated April 26, 2007, which included an appraisal of events that occurred in early 2007, Chief

Cogswell stated that overall, Townsley failed to meet expectations for while "he has demonstrated competent fireground skills ... he has not demonstrated the leadership style that is productive for a public safety entity." Cogswell warned Townsley that "if this situation is not turned around quickly and further issues remain, the result shall be demotion or termination."

Joint Ex. 12.

5. In the specific elements of the review, Chief Cogswell concluded that Townsley met only some expectations as far as safety is concerned. He noted:

I think it would benefit for Captain Townsley to become more familiar with the Department Rules and Regulations. Captain Townsley has on several occasions been very critical of the Department S.O.P.'s.

Captain Townsley's failed to meet Cogswell's expectations for dependability and reliability. The Chief wrote:

It is with regret that I complete this section as it will indicate a complete dissatisfaction with Captain Townsley. In March 2006, when the Strategic Plan report was presented to Members of this Department to indicate where this organization needed to go, I especially expected the Senior Staff of the Department to attend. Captain Townsley attended a get together with his Group at the Rist Tavern. Two of the members of Group Three were in attendance for the presentation; however, this Captain chose not to attend.

I was very disappointed when Captain Townsley decided to resign as the building maintenance and apparatus maintenance supervisor. I was told by Captain Townsley that a decision made by this office between him and I in regards to our responses to medical emergencies propelled his decision. It was at this time that I received in writing his refusal to continue to be the supervisor of the previously mentioned assignments. Captain Townsley also placed in writing, "I will follow the order to run the engine but will not be part of a team that is not making quality decision[s]".

Sometime later, in a handwritten note on the evaluation, the Chief stated that he had written that Captain Townsley had been at the Rist Tavern During the presentation of the Strategic Plan because:

I was advised by a member of Group 3 that this took place. I had no reason not to believe him. Capt. Townsley stated that this did not occur, that he was home that evening.

Chief Cogswell also determined that Townsley failed to meet expectations for initiative.

As described by the Chief:

Captain Townsley could be an asset to the Department, but as the above statements indicate, he does not put this organization above a dispute in policy within the Department. The lack of commitment to this job and this administration is evidence in the way he continues to have little regard for the policies, procedures, and decision that come from his ranking officers.

In recent months there have been several issues in Group Three that the administration has investigated. One being a sexual harassment complaint. The issue was investigated through this office and the Human Resources Division for the City and was unfounded. Second, there was a harassment issue that stemmed from the Group and was investigated thoroughly. A complete report on the investigation was prepared for Human Resources.

I fail to understand why Captain Townsley was not aware of Firefighter ***** words and behaviors and did not stop them; or why any Firefighter did not have enough trust to speak to Captain Townsley about this, or why Firefighter ##### was unable to have enough trust in him to speak to him about this as well. This is another example of Captain Townsley's statements over the previous sixteen months advising that, "I will not discipline them", "It is not my job", "I will not deal with it", "I'm not baby sitting them".

I have made copies of certain sections of a text book that is required reading for promotional exams; exams that Captain Townsley has taken, that refer to these issue. The section on discipline states: "One of a company officer's most important and sometimes most difficult duties is maintaining order and discipline within the company."

The Chief also determined that Townsley failed to meet expectations in human relations.

He stated:

This section is probably the most troubling for me. Captain Townsley has over the last several months created an environment in which he has dismissed the administration of the Department, criticized policies in front of the Members, and has made statements that do not show a leadership quality or potential in this Organization. A Captain of this Department may disagree with the administration and discuss these matters at any time with the administration, but shall not inflict a venomous undertone with the rank and file that creates disharmony and low morale within the Organization. I feel that if this path is not corrected, I will have no other option that to seek a demotion or termination of

Captain Michael Townsley.

The majority of this Department is not in agreement with Captain Townsley's attitude, lack of support for this Administration, fellow officers, Senior Men, as well as personnel of the Department as a whole. Captain Townsley's attitude and behavior is detrimental to this Department, as well as to the Officers and Firefighters of the Department.

Townsley fared no better in the Chief's assessment of him for teamwork and cooperation, again failing to meet expectations. The Chief wrote:

In my opinion Captain Townsley creates an inefficient work environment in the Department that is not productive and is harmful to Department morale and diminishes the goals and objectives of the Organization.

Townsley also failed to meet Chief Cogswell's expectations for potential for leadership.

The Chief commented:

Captain Townsley seems to have a lack of respect for his fellow Officers and the Senior Administration of the Department. In my opinion, he does not resolve conflict within the Department. Quite the contrary, he creates acrimony. Captain Townsley continues to be sarcastic towards policy, procedures, and his supervisors in front of the Privates. For example, at roll call, Captain Townsley's negative attitude towards this Administration and his fellow Officers, as well as the Department's procedures, creates an environment that is not acceptable to a fire service, and demoralizes the Members of this Department. This is an example of the lack of leadership that Captain Townsley displays. There is a place for disagreements between officers and Senior Officers within the Department; however, it is not in front of the rank and file. I have openly remarked to Captain Townsley on several occasions that he may approach this office at any time to discuss the situation, including procedures and policies, but it shall be amongst the senior staff, not the rank and file.

In my opinion, Captain Townsley does need assistance in leadership skills as a supervisor when dealing with employee disciplinary issues, and needs to step up when necessary to point an employee in the right direction. Captain Townsley shows a lack of leadership that does not prosper a positive environment.

Joint Ex. 12.

Townsley Response to Performance Appraisal

6. Townsley received the 2006 performance evaluation on June 6, 2007. He completed

his comments on the evaluation on June 22, 2007. To the specific appraisals made by Chief

Cogswell, he responded:

Safety - As shift officer I believe safety is most important at all times and is accomplished by following the Rules and Regulations and the Standard Operating Procedure[s]. If there are any safety issues they are corrected immediately.

Dependable and Reliable - As Captain I have made a point to make myself available for callbacks and to show up for work on time and ready. I have kept myself in good physical condition by working out and promoting physical fitness. I make most meetings when time permits. It has also been my objective to give a high level of service beyond firefighting and managing by working on projects in the station to curb costs to the town.

I have provided:

Hose Tower Rack when it needed replacement
 Safety boards for hose tower for kids when on apparatus floor
 Upgraded hearing system from steam to water (\$25,000 plus job for \$3,500 materials and AC time [compensatory time] and \$6,500 in fuel savings in first year
 Garbage disposal
 Cordless Sawsall
 Air Conditions - OD [off duty] room
 Bedding - Mattresses
 Removal of old watch room

My reliability is shown with the completion of the projects above.

Initiative - As Captain, and as a Private I have taken extra duties, identified problems, performed corrective measures and provided solutions within the chain of command. This included making the request of changing the heating system, which I pursued for many years. It came to light with backing from other agencies and assistance from a fellow fire fighter that I asked to assist. If all things are looked at, my initiative to providing has far exceeded expectations. I don't take a back seat to things when a job needs to be done.

Human Relations - My human relations is as important as safety. I work to promote a good image and provide a high quality atmosphere to work in. I do not tolerate any abusive language or discriminating remarks. I have also been working on the Safety Committee, which I was approved by the Union to represent.

Team Work and Cooperation -As Captain I have promoted a good group environment and received high level of service from group members on all subjects. The men and women

have assisted me on many assignments and I have assisted them when they have needed it.

Potential for Leadership - This starts with being honest and fair to fellow members, which has provided me the ability to have people listen and respect the orders that are given. I lead by example, by giving 100% in what I do. There is no room for improper treatment or disrespect or employees or anyone for that matter. I hold myself to a high standard and it has given me great returns.

Joint Ex. 13

Disciplinary Proceedings Against Townsley

7. Robert Strahan, who became Deputy Chief in January 2007, issued Townsley a written reprimand on August 9, 2007 for failing to follow Fire Department Rules and Regulations when ordering boots for members of his firefighter group. Strahan Testimony, Stipulation, and Joint Ex. 17. Townsley grieved the reprimand and the negative performance evaluation for the year 2006. He requested a hearing before the appointing authority, Mayor Christine Forgey. Stipulation and Joint Ex. 24.

8. Mayor Forgey declined to hear the grievance of Townsley's performance evaluation as it was not filed timely. Joint Ex. 25 She did, however, on September 5, 2007 hold a hearing on the boot purchase reprimand grievance. Joint Ex. 16. Captain Townsley testified at this hearing. Forgey testimony. The mayor issued a decision five days later. She determined that Townsley had violated Department Rule 5.26, which provides that "No officer or Member of the Department shall purchase or subject the Department to any financial obligation without prior approval from the administration." In rejecting Townsley's claim that the boot purchase had been approved by the Chief's assistant Diane Lively, she concluded that Lively had not given such permission and had no authority to approve such a purchase on her own in any event. She

noted as well, that Townsley had ignored a directive from the Chief at a March 13, 2007 staff meeting, at which he was present, requiring that “any expense over \$100.00 needs to come through the office first, because a purchase order is now required.” Joint Ex. 26.

9. The Mayor did not accept the discipline proposed by Deputy Chief Strahan, finding it insufficient. She stated that she would determine the appropriate discipline at a subsequent hearing that would also consider “other serious matters concerning Captain Townsley” that had been brought to her attention after she read Townsley’s personnel file. Forgey testimony and Joint Ex. 26.

10. On September 10, 2007, Mayor Forgey sent a memorandum to Townsley informing him that she would hold a disciplinary hearing on September 20, 2007 concerning discipline that “may be up to and including suspension, demotion, or termination.” The Mayor informed Townsley that the hearing would involve matters regarding:

- Failure to take proper and appropriate direction from your supervisors up to and including insubordination;
- Failure to model appropriate behavior as a captain;
- Supervisory actions or decisions that negatively impact the orderly operations of the department;
- On-going, continuing and consistent sub-standard or problematic work performance including issues of professional fire standards, duties, judgment, decision making, and attention to personnel matters as a supervisor.
- Failure to adhere to fire department procedures, protocols, or violates department rules or regulations, including Roll Call SOPs and your recent unauthorized ordering of departmental equipment and expending fire department funds without authorization.
- Intent to use sick time fraudulently
- Inappropriate criticism of the command structure and department to subordinates
- Giving inappropriate directives to subordinates regarding obeying superior officers directives or commands
- Failure to comply with uniform policies;
- Failure to appropriately respond to insubordinate behaviors, words or actions or subordinates.

Joint Ex. 27.

11. She enclosed four documents with the notice: Townsley's employee appraisal of April 26, 2007, correspondence from January 1, 2007 concerning his resignation as the Fire Department's vehicle and building maintenance supervisor, the boot purchase reprimand, and a memorandum from March 7, 2006 regarding breach of confidentiality in talking to a reporter. She also informed Townsley that she would hear testimony concerning statements of his to the Chief or Deputy Chief that reflected "unprofessional, uncooperative or insubordinate behavior," including:

stating to the Chief you will not return to duty on any call backs and shifts unless you grievance "has been solved, as well as the situation in general";
undocumented and irresponsible charges that the Chief has created a "hostile environment";
refusal to attend senior staff meetings if they conflict with your personal business and that your primary job is not as a firefighter but as a plumber.

Joint Ex. 27.

12. Mayor Forgey ultimately held the disciplinary hearing on September 26, 2007. Chief Cogswell and Deputy Chief Strahan testified. Townsley did not present any witnesses, but did submit documents and his counsel cross-examined the Department's witnesses. Forgey and Townsley testimony, Joint Ex. 28, and post-hearing stipulation. On the basis of the evidence before her, the Mayor found as follows:

During this year, 2007, your behavior has continued to be unsatisfactory. In January you resigned from an appointment to handle building and vehicle maintenance matters, as a protest against an operational decision as to rescue responses you disagree with. In March you violated a department regulation about discussing departmental administrative matters with the press; at the very least an officer would be expected to discuss such conduct with his superior, in advance, to be sure of his ground under departmental policy. In March, in response to concerns addressed by the department, the Town's Human Resources Director, and myself, your unsatisfactory performances areas were identified,

discussed with you, incorporated in your evaluation, and followed up on in July. In April another incident involving a dispute between two members of your group became an issue that you could not or would not handle, ultimately again getting outside the department and to the attention and action of the Human Resources office and myself. In May a firefighter in your group asked to be transferred because of problems with your leadership. In addition another employee was reported by you to have been threatened, but when that employee disputed it and the issue of possible coercion was raised, you washed your hands of the incident, ("I am done dealing with it") rather than taking a more responsible leadership role. For some reason you also instructed your group that they could walk away from an officer who was yelling at them, when fire service expectations around the concept of insubordination are just the opposite. In August the purchase by you of unnecessary boots took place, in violation of regulations, in violation of specific directions given in a staff meeting, and without any attempt on your part to be sure your conduct lined up with departmental expectations. Your subsequent admission of a mistake simply does not provide the Town with any basis for expecting that you will not continue to behave in an insubordinate manner due to an apparent lack of judgment that ties all of these incidents together. In addition to all this, Deputy Strahan has, without any stated disagreement by yourself, testified and I find that you continue to discuss your disagreements with policy with your subordinates, including such comments as "This department is not being run appropriately." You have stated that your plumbing business requirements are more important than your responsiveness to alarms and callbacks and shift filling. You unilaterally decided to wear inappropriate shoes well after the end of the original cause for doing so, stopping only when the Deputy Chief spoke to you. You failed to assist the Deputy when one of your men recently refused to speak to him. And you recently refused to take pagers from the Deputy, saying that you will only accept them from the Chief. All of this, much of it low level but exacerbating and annoying, evidence of an uncompromising attitude of disrespect toward departmental authority, is more than adequate justification for my finding that your behavior in general constitutes conduct unbecoming an officer, that despite reasonable efforts of correction your behavior continues, and that the recommendation of the Chief that you be reduced in rank is fully warranted.

Those allegations which I have found to be supported constitute unacceptable behavior by you over many months, despite evaluations, and both verbal and written efforts on the part of the Department to change this behavior. These behaviors constitute incidents of repeated, significant and serious violations of reasonable rules and expectations of the Department. Taken together, the evidence shows an officer of the Department who will not conduct himself in an appropriate, subordinate manner as relates to his clear obligations as an officer of the Department. The most recent incident that triggered this proceeding involved a wholly unreasonable purchase that casts further and severe doubt on your capacity to exercise the essential level of judgment necessary for an officer in the fire service.

You have grieved the reprimand given you by the Chief over this incident, and in response to that grievance I find that severe discipline is absolutely appropriate for this behavior, which you have attempted to blame on the Department's Administrative Assistant, rather than accept your role as an officer and the responsibility that comes with the position.

In consideration of this incident and the other findings made under the referral document, I am of the opinion that further efforts by the Department to counsel, discipline and work with you to improve your performance as an officer is neither likely to succeed, nor appropriate. While you have repeatedly demonstrated yourself to be an excellent firefighter, and to have the ability to perform many individual tasks in an outstanding and commendable manner, your exercise of leadership in an officer capacity, as evidenced by your record, remains unsatisfactory.

I am therefore, based on this record, removing you from the rank of Captain and demoting you to the rank of private firefighter, effective this date.

Joint Ex. 28.

Incidents Pertinent to Townsley Discipline

Conversation with Reporter

13. On March 7, 2006, Chief Cogswell met with Townsley concerning a discussion he had with a reporter for a local newspaper about a civil service test to be used to help select the town's next permanent fire chief to replace the recently retired Chief, Hormidas Lively. Joint Exs. 29 and 30. Townsley had signed up to take the test and, while on a break as shift officer, was approached by the reporter, who observed him studying for it. Townsley confirmed that he had signed up to take the test. The reporter told him that he was unlikely to be able to take the test because a minimum of four candidates must sign up for the test, but Townsley was the only one who had. Townsley testimony. The reporter later called Chief Cogswell and told him that Townsley had confirmed that he was the only one to sign up to take the test. Cogswell testimony. When Chief Cogswell met with Townsley, he advised him that "is was against the

Department's Rules and Regulations (Chapter 5.05) to discuss any administrative matters for publication, especially while on duty because he was representing the Department. Cogswell testimony and Joint Ex. 29. Rule 5.05 provides:

Members or employees of the Department shall not . . . make statements for publication concerning the plans, policies, or affairs of the administration of the Fire Department,

Joint Ex. 4. Although Townsley's impression was that this was a routine contact that a shift officer may have with the press and it concerned information just about himself, he nonetheless apologized to Chief Cogswell. Townsley testimony and Joint Ex. 29.

Strategic Plan Meeting

14. The town had hired a consulting firm to prepare a strategic plan for the Fire Department. The consultant presented the plan to the Department at 5:00 p.m. sometime in March 2006. Cogswell testimony, Joint Ex. 2 and 12. Chief Cogswell expected the senior staff, including the captains to attend. Two members of Townsley's group 3 attended, but Townsley did not. Cogswell testimony and Joint Ex. 12. A member of group 3 told Cogswell that Townsley and others were at the Rist Tavern instead. Joint Ex. 12.

15. There is no evidence in the record that Cogswell and Townsley discussed this incident until after Chief Cogswell met with Townsley on August 29, 2006 concerning another matter. Respondent's Ex. 3. The minutes of that meeting reflect no resolution. Chief Cogswell told Townsley that he needs "everyone to be on board," and that it had been bothering him that Townsley did not attend the strategic planning presentation. Townsley assured the Chief that he was on board. Respondent's Ex. 3.

16. After the Chief set forth his version of events in the evaluation of Townsley he prepared in April 2007, Townsley told the Chief that he was not at the Rist Tavern, but had family obligations that evening and thus was at home then. Townsley testimony and Joint Ex.

12. At the time of the presentation of the strategic plan, the Rist Tavern had been sold and was not open for business. Townsley testimony.

Fire Dorm Controversy

17. One of the recommendations of the strategic plan was that the Department provide a separate bunk room for female firefighters. Joint Ex. 2. Another was that it adopt written standard operating procedures. Joint Ex. 2.

18. The Department had employed its first female firefighter, Janet Wholey, in 2003. Cogswell testimony. The Department responded to the recommendation of the strategic plan by promulgating a standard operating procedure on April 13, 2006 that established the west dorm as the female firefighter sleeping quarters. Respondent's Ex. 4.

19. Firefighter John Lyford had been sleeping in the west dorm. Wholey and Lyford were both in group 3 under Townsley's command. They approached Chief Cogswell and asked if they could share the west dorm. The Chief told them he would not object, so long as they obtained approval from Townsley. They then approached Townsley who reluctantly agreed to the arrangement because it violated the standard operating procedure, but told them if any issues arose he would immediately terminate the arrangement. A few days later, the Department conducted a hazardous materials training exercise with firefighters from outside Greenfield. One of those firefighters told Wholey she should change the dorm situation. Wholey then approached Townsley who agreed to make the change. He then informed Lyford that he could no longer use

the west dorm. With Chief's permission, he offered Lyford the use of the officer's room, thinking Lyford's concern was privacy. Townsley testimony.

20. The matter did not end there. Dave Mathey, the senior man in group 3 heard Lyford making snide remarks to Wholey. He reported this to Deputy Chief Strahan, who in turn told the Chief, who brought in the Town's human resources department, which then investigated. Cogswell testimony. Wholey told human resources she was being harassed; she had not told Townsley. Cogswell and Townsley testimony.

21. Townsley does not recall Lyford making any harassing remarks to Wholey in his presence. Townsley testimony. Deputy Chief Strahan does not recall hearing any harassing remarks either. Strahan testimony.

22. Chief Cogswell informed Townsley that Wholey was alleging harassment and that he needed to address it. Townsley told the Chief that it was up to the Chief to impose discipline. No one has been disciplined as a consequence of the harassment allegation, although Strahan concluded that Wholey was being harassed. Cogswell testimony.

23. The Town has not resolved Wholey's complaint because it has not come up with concrete evidence. Forgey testimony.

24. Lyford felt slighted by being told he could not bunk in the west dorm. He went to the union and filed a complaint with the Massachusetts Commission Against Discrimination (MCAD), which he later dropped. Lyford testimony. On October 11, 2006, he emailed Mayor Forgey, Chief Cogswell, and the Chief's assistant Diane Lively asking them to look into whether the union contract was being violated by the Department's handling of sleeping arrangements for female firefighters. Respondent's Ex. 10. On February 8, 2007, he filed public records request

with the town by email asking for all financial records pertaining to Wholey since her date of hire. He made this request as part of his effort to obtain documents for his MCAD complaint. Respondent's Ex. 10 and Lyford testimony.

25. There is no evidence that Lyford ever directly informed Townsley that he was dissatisfied with the decision removing him from the west dorm. He attributes that decision to the Chief for he told human resources that the Chief had removed him from the west dorm. Forgey testimony.

26. Lyford later asked for a transfer because he felt slighted and did not want to work with Wholey anymore. He denies that his transfer request had anything to do with Townsley or his leadership. Lyford testimony. There is no evidence on whether he was transferred out of group 3. His was listed as a member of group 3 in a memo prepared by Townsley in August 2007. Joint Ex. 20.

27. The town has not resolved Lyford's complaint. Forgey testimony. The Chief has not discussed the complaint with Lyford nor has he asked Lyford about how Townsley performed as captain. Lyford testimony.

Roll Call Incident

28. The Department promulgated a standard operating procedure for roll calls effective August 2, 2006. The SOP described the roll call procedure as follows:

An official Greenfield Fire Department Roll Call shall occur at shift change. At 0800 and 1800 hours, this Roll Call will take place on the apparatus floor. The off-going Group and the on-coming Group will assemble on the apparatus floor in two separate locations for the ease of operations.

Joint Ex. 15.

29. On August 22, 2006, Townsley's group was scheduled to complete its shift at 4:00 p.m., to be replaced by a group captained by Michael Winn. Joint Ex. 16. At around 4:00 p.m., Townsley asked Winn if he was all set, Winn said yes, and so Townsley left the fire station. Townsley testimony. Winn followed him outside and asked Townsley where he was going, saying he had not called roll yet. Townsley returned to the fire station and had a heated exchange with Winn in the officer-in-charge's room, with Winn asserting that he was following procedure and Townsley objecting to Winn's handling of the situation and, in Winn's version, to the roll call policy itself. Joint Ex. 16. There is no evidence that any of the other firefighters heard this exchange. Lyford testimony and Respondent's Ex. 3.

30. The following day Captain Winn sent an email to Chief Cogswell describing his version of the roll call events, including that Townsley had released his group before roll was called and that Townsley had harshly criticized the roll call policy. He asked to discuss the situation with the Chief as he did not know how to handle it himself. Joint Ex. 16.

31. A few days later, the Chief met with Townsley, three other members of the fire Department, a meeting which Winn joined later. Townsley told Cogswell that Winn had no need to call roll because he had been speaking to the firefighters for twenty minutes as they worked around the station. Cogswell agreed that judgment must be used when firefighters are working on the apparatus. Townsley denied that he had released his group before roll was called and denied that he objected to the roll call policy. Rather, he stated that roll should have been called before 4:00 p.m., a proposition with which the Chief agreed, saying that was the approach that had been agreed to at a prior officers' meeting. Cogswell told Townsley he should have been at

the meeting at which this was discussed. Townsley replied that he thought he should be paid for attending meetings, and that compensatory time was insufficient. Respondent's Ex. 3.

Medical Emergency Response Controversy/Building Maintenance Supervisor Resignation

32. In January 2007, at a regular monthly meeting of officers and senior men, the Chief proposed that, when a rescue call was received by the Fire Department, the Department respond with a pump truck manned by a captain and three firefighters rather than a rescue truck. Those in attendance agreed to this proposal. Cogswell testimony and Joint Ex. 11.

33. Townsley did not attend this meeting. Cogswell testimony. Townsley missed a number of meetings under Chief Cogswell and Chief Lively if the meetings conflicted with plumbing jobs he had. Cogswell and Townsley testimony. Others with side jobs would also miss meetings. Forgey testimony.

34. Townsley objected to the medical emergency response proposal on safety grounds and, after speaking to Chief Cogswell, sent him a memo on January 31, 2007 expressing his concerns. He sent a copy of the memo to the executive board of the union. In the memo, he asked whether the rescue truck could be used if a full complement of six firefighters were working a shift and told the Chief that he thought the lighter rescue vehicle could be driven more safely to medical emergencies, with less risk of rollover than a speeding fire truck. He also asked if a Ford Expedition that Department would be receiving could be outfitted with equipment specific to medical emergencies and used to respond to such emergencies in the future. Townsley testimony and Joint Ex. 8.

35. Cogswell responded in an email by 2:00 pm. that day that he had considered Townsley's comments, but would stick with the decision to have a fire truck respond to medical

emergencies. He informed Townsley that he "did think it reasonable to look into the ambulance out back if you choose to." Cogswell testimony and Joint Ex. 9.

36. Townsley responded that day with the following memo:

Chief, I will be resigning effective immediately from building Maintenance and Vehicle Maintenance. I have made this decision out of concern that the department is not being run in an efficient and safe manner. I have provided you with contractors that get the projects done at the Fire Department with minimal costs. I have also provided you with cost savings in regards to heating of the building. These projects were done so we could provide savings to the tax payer and provide a better place to work. I would expect that same when it comes to serving the community with emergency services. Running a vehicle that is not practical when man power permits a better choice is not reasonable. The choices to run an engine instead of the rescue at this time is not efficient. I will follow the order to run the engine but will not be part of a team that is not making quality decision[s].

Joint Ex. 10.

37. The Building Maintenance and Vehicle Maintenance positions were volunteer positions that Townsley had occupied since at least January 2006. Cogswell testimony and Respondent's Ex. 5. Townsley is a plumber and used his plumbing skills during this time to switch the heating system in the Fire Department building from steam heat to forced hot water. He knew when he resigned that the Chief could replace him with another firefighter who was also a plumber and had already been helping him. This is what happened and no problems with the transition to the new person occurred. Townsley continued thereafter to assist with work on the building. Townsley testimony.

38. Townsley acknowledged that the tone of his memo was intemperate. Townsley testimony. The Chief viewed it this way as well for he responded later that day with the following memo:

I was sorry to read your submission of a letter to resign as the building and vehicle maintenance supervisor; I felt we made positive steps due to your mechanical aptitude in this area. I can't help but think that your choice was solely based on the decision you did not like about providing the best possible services for the community that we can. I do not put trivial issues before the safety of the firefighters and or the community at large.

I am compelled to offer you that perhaps if we can not work together as general staff I would recommend that you step down as captain and return to the rank of private, due in large part that you are unable to administer a simple order that is driven by this office and the recommendations of you[r] fellow officers.

Joint Ex. 11.

39. On February 8, 2007, the Department promulgated a standard operating procedure for emergency medical responses. It provided that a fire engine would be the primary vehicle to respond to a medical emergency. Joint Ex. 4. Townsley followed this procedure when his group had to respond to a medical emergency. Townsley testimony. Both Chief Cogswell and Deputy Chief Strahan heard, however, that Townsley had criticized this policy decision in front of his group during at least one roll call. Cogswell and Strahan testimony and Joint Ex. 7. Townsley is sure that his group knew of his displeasure with the procedure in part because the memo he copied to the union would have gone to the safety committee, three of whose members were in his group. Townsley testimony. Three of the firefighters who testified from his group did not recall him criticizing this policy to them. Phelps, Seaman, and Lyford testimony. One did. Mathey testimony. Strahan spoke to Townsley about this and cautioned him that "he could disagree with the administration on the floor of the union hall and with his fellow officers, but I tried to explain how damaging it was to the smooth operation of the department to put down the administration and make comments such as 'this department is not being run efficiently' to members of this group." Joint Ex. 7.

Threat to Firefighter Incident

40. Sometime in the spring of 2007, while Townsley was on vacation, he received a phone call at 8:45 a.m. from Janet Wholey. Wholey had come in early and was performing a task related to an equipment inventory Group 3 was performing. The shift captain, Captain Edward Jarvis, yelled at her about the inventory of a particular tool and she walked away from him. Townsley testimony. Captain Jarvis told her not to walk away and threatened her with discipline. Cogswell testimony and Respondent's Ex. 2. When she spoke to Townsley, she was upset and told him she felt attacked and threatened; she did not mention that Jarvis had given her an order. Townsley told her to remove herself from the threat and that he would call Chief Cogswell. He did so and informed the Chief that Wholey had been threatened by Captain Jarvis and was afraid to go to roll call. Townsley testimony. Chief Cogswell asked Deputy Strahan to look into it. Wholey told Strahan that Jarvis had raised his voice to her and threatened her with discipline, but that she was not afraid to go to roll call. Wholey also said the Townsley had told his group that they should walk away if someone was yelling. Strahan testimony.

41. Chief Cogswell later met with Townsley and then separately with Wholey. With Townsley, the Chief expressed concern about whether Wholey had felt pressure to change her story from the one Townsley had initially conveyed to him to the one she told Strahan. Townsley told the Chief that he was only the messenger and that he was "done dealing with it." Townsley acknowledged to the Chief that he had told his group member to walk away if someone is yelling at them, no matter who it is. Cogswell testimony and Respondent's Ex. 2. He did not tell Wholey or his group to disobey an order from an officer. Townsley testimony. Chief Cogswell told Wholey that walking away from a superior officer was not the appropriate approach and that

she should instead have stayed and later brought any claim of inappropriate behavior to his attention. Cogswell testimony and Respondent's Ex. 2. Although Chief Cogswell thought Wholey had been insubordinate, she was not disciplined. Cogswell testimony.

42. About one week before this incident, Strahan and Townsley had a heated conversation in Strahan's office. According to Strahan, Townsley voiced his objections and then tried to take control of the conversation, to which Strahan responded in kind:

In order to gain control of the conversation I raised my voice over his. He did not like the fact that I raised my voice and started to get up from his chair and leave stating that ... "I don't have to sit here and listen to this and I will just leave sick". I stated to him that I was not done with him and to sit back down. The conversation went on without incident and he left my office.

Joint Ex. 7.

Townsley's Boot Purchase

43. In early August 2007, Townsley purchased over \$1,000 of boots for members of the Fire Department. Cogswell testimony.

44. Fire Department Rule 5.25 provides that:

No Officer or Member of the Department shall purchase or subject the Department to any financial obligation without prior approval from the administration.

45. Requests to purchase were supposed to be emailed to the Chief, and then either the Chief or the Deputy Chief would authorize the purchase. Strahan testimony. In practice, Diane Lively, the Chief's assistant, was often asked about purchases. Lively testimony. She is a member of the administration. Strahan testimony. When asked about a purchase, Lively obtained permission from the Chief or the Deputy Chief. Lively testimony. Townsley thought

that Lively handled routine purchases; he had previously made boot purchase requests through her. Townsley testimony.

46. Some purchases required purchase orders. Purchase orders were normally signed by the Chief. Lively testimony. Since at least late 2006, the Town required purchase orders for purchases of over \$1,000. Strahan and Townsley testimony. If the Town was short of funds toward the end of a fiscal year, it would place other limits on purchases. Townsley testimony. That happened in the spring of 2007. At a staff meeting on March 13, 2007, which Townsley attended, the Chief announced that:

any expense over \$100 needs to come through the office first, because a purchase order is now required (by Accounting). The Chief advised that there may be a freeze on purchasing next month.

Respondent's Ex. 9. After the meeting, Diane Lively sent an email to staff, including Townsley, which read:

The Accounting Department has requested purchase orders on all purchases (prior to actual purchase). Therefore, no purchase can be made without going through the office. If there is an emergency need, please feel free to call Deputy Strahan or me at home if we are not in.

Respondent's Ex. 6.

47. When the new fiscal year began, such additional Town limits on purchasing had been routinely lifted previously. Townsley testimony. In July 2007, the Town requirement for a purchase order for purchases over \$100 was lifted. That did not necessarily remove any separate limit the Fire Department had placed on purchasing. Lively testimony.

48. Townsley had some experience making substantial purchases for the Fire Department. He had ordered the materials needed for the building maintenance, including the

new heating system, when he was the building maintenance supervisor. Lively and Townsley testimony. Individual purchases for this work were authorized by a blanket purchase order signed by Chief Cogswell. Lively testimony.

49. In late July 2007, a sales representative for a company called Station House Supply, Inc. visited the Greenfield Fire Department headquarters. Lively and Townsley testimony and Respondent's Ex. 9. Townsley spoke to the salesperson about whether the company sold boots for firefighters. The salesperson confirmed that it did. Townsley told the salesperson that permission would first have to be obtained before any boot purchase could be made. Townsley testimony.

50. Townsley approached Lively and asked if boots could be purchased through Station House Supply. Townsley testimony. Lively said that Station House was a vendor through which boots could be purchased. Lively testimony and Respondent's Ex. 9

51. The contract called for the Fire Department to provide each firefighter with two pairs of boots. Joint Ex. 1. Firefighter boots come in rubber or leather. The Fire Department pays the entire cost of a pair of rubber boots, but does not necessarily do so for more expensive leather boots. Joint Ex. 18. At Townsley's request, Lively prepared a memo concerning this aspect of boot purchase. Lively testimony. Her memo was approved by Chief Cogswell. Cogswell testimony.

It read:

Please be advised, the Fire Department will provide all members with leather boots, and there is no additional fee for leather boots as opposed to rubber boots. The maximum amount the Department will pay for leather boots is \$259. If you find a pair that you would prefer, but they are more expensive, you are free to pay the difference, as long as the boots are NFPA [National Fire Protection Association] approved.

Joint Ex. 18. Townsley posted the memo on the bulletin board and in the roll call area, and placed it in the shift book. Townsley testimony.

52. The sales person left boot samples in the watch room, where they stayed for about one week. Townsley testimony. Strahan saw them there. Strahan testimony. So did another captain, Captain Tufano, who asked Lively whether Townsley had put him on his list for boots, a list she had not seen by then. Respondent's Ex. 9.

53. Around August 6, 2007, Townsley ordered five pairs of boots from Station House Supply for members of Group 3, including a pair for himself to replace a pair of seven year old boots. Stipulation, Townsley testimony, and Joint Exs. 20 and 21. An unidentified person or persons also ordered a pair of boots for Captain Tufano and other equipment from the company, including a stabilizer strap and a leather radio holder. Townsley testimony and Joint Ex. 21. Station House Supply billed the Fire Department for \$1,632. Joint Ex. 21.

54. On August 7, 2007, Lively noticed some of the boots in the watch room were missing. She mentioned this to Deputy Chief Strahan, who told her to contact Captain Townsley. When she did, Townsley told her he had distributed a couple of pairs to firefighters and had placed an order with Station House Supply. She told him he should have submitted a list through her first in order to obtain approval. Respondent's Ex. 9. She asked him to prepare a list of the boots he purchased, which he did. Joint Ex. 20 and Respondent's Ex. 9.

55. Later in the day, Lively spoke to firefighter Randall, and asked him why he needed boots when his boots were only two years old. In her memo recounting her knowledge of the boot purchase, she said "I assured FF Randall that, if his boots truly needed to be replaced, that was fine, stating that safety was a priority; however, I advised him that the Department was not in

a position to replace boots every two years.” Townsley spoke to her the following day about Randall’s boots telling her, that per the contract, he had ordered leather boots to replace Randall’s rubber boots. Respondent’s Ex. 9.

56. When the Department received the boots, it sent back two pair, including the pair Townsley had ordered for Randall. Cogswell testimony and Joint Ex. 21.

57. On August 8, 2008, Lively emailed Townsley a “reminder” that “no purchases are to be made without going through either the Chief, Deputy Strahan, or myself.” Appellant’s Ex. 2.

58. In the reprimand Deputy Chief Strahan issued to Townsley the following day, he stated:

Based on our conversation that I have had with you and looking into the situation of you ordering Firefighter boots for the Members of your Group, I have determined that you have violated the Rules and Regulations of this Department and you are hereby issued this formal Letter of Reprimand.

I have been made aware that several pairs of boots were left in the Firehouse by vendors for evaluation and fitting purposes. I understand that you issued at least one pair of boots to at least one Firefighter and that you also kept a pair for yourself. I do not believe that you had permission to keep those boots. In addition, I have been advised that you also order additional pairs of boots. I am unaware of any member of this Administration that give you permission to order such equipment, and no information regarding this order was provided to the Administration, until Diane [Lively] asked you where the demonstration boots had gone. According to the Rules and Regulations, Section 5.26, “No officer or Member of this Department shall purchase or subject the Department to any financial obligation without prior approval from the Administration.” This was clearly not adhered to. You were advised in a staff meeting on March 13, 2007 that the operating budget for fiscal year 2008 did not look good and that we must watch all spending. Also at the same meeting, Chief Cogswell stated that “any expense over \$100.00 needs to come through the office first, because a purchase order is now required”. The statement was followed by a memo via IMC [email] stating the same. This procedure has not been reversed from this office. Upon questioning by me, you stated that a memorandum was issued from Diane, and through that memorandum, you were under the impression that you could order boots. I have read the memorandum, and never is it stated that anyone should or could order the equipment without following proper procedures.

I am sure that you had the best interest of the Members of your Group in mind when ordering the boots; however, we do have procedures in place for a reason and those procedures must be followed. You have admitted to making a mistake, and that is most certainly taken into serious consideration; however, it is unacceptable that you have ignored specific directions given in a staff meeting, you have disregarded a follow-up memorandum sent to you documenting purchasing procedures, and you have not adhered to the Rules and Regulations of the Department, which cannot be tolerated.

Joint Ex. 17.

Townsley's Shoes Incident

59. Sometime in 2007, Townsley suffered a heel spur and for a time wore green leather hiking boots to work rather than black shoes as normally required. Strahan noticed, and since Townsley had not mentioned anything to him about the shoes, he asked Townsley, who told him about the heel spur and asked if he needed a doctor's note. Strahan said no. Within one week, Townsley had obtained shoe inserts and was able to resume wearing his standard black dress shoes. Strahan and Townsley testimony and Joint Ex. 7. Strahan, who did not perceive this to be a major issue, had expected that normally a person with a foot problem would have come to him and inform him about it. Strahan testimony.

Weingarten Rights Incident

60. Sometime in 2007, as well, Deputy Chief Strahan received a letter from the local District Attorney's office regarding whether firefighter Lyford wished to press charges in connection with a back injury he suffered when fighting a fire set by an arsonist. Strahan asked Townsley to bring Lyford to his office, which Townsley did. Strahan and Townsley testimony and Joint Ex. 7. Strahan attempted to speak to Lyford, but Lyford, unsure of what the conversation was about, invoked his "Weingarten" rights and refused to speak to Strahan without a union representative being present. Lyford, Strahan, and Townsley testimony. Strahan did not

show the letter to Lyford or seek Townsley's assistance. Townsley testimony. Townsley did not come forward to assist Strahan. Strahan testimony and Joint Ex. 7. Lyford was determined not to speak until he had union representation. Lyford testimony. He talked to firefighter Kurt Seaman, who was the union representative, and thereafter spoke to Deputy Chief Strahan. Lyford and Strahan testimony.

Pager Incident

61. In early September 2007, the Fire Department handed out pagers to the firefighters. While it had no rule requiring that a firefighter take a pager, management had decided that pagers were to be part of a firefighter's standard equipment. Strahan testimony. Townsley did not take a pager. As the Department was already disciplining him for failing to follow procedure when purchasing boots, he declined to accept a pager without permission from the Chief. He was also concerned that if he lost the pager, he would have to pay for it. Townsley testimony.

Discussion

A tenured Civil Service employee may be demoted for "just cause." *See* M.G.L. c. 31, § 41. The hearing on appeal from a demotion decision by the appointing authority is *de novo*. *See Sullivan v. Municipal Ct. of Roxbury*, 322 Mass. 566, 569, 78 N.E.2d 681, 620 (1948). The issue on appeal is, however, not whether the Civil Service Commission (or the Division of Administrative Law Appeals) "would have acted as the appointing authority had acted, but whether, on the facts found by the commission, there was reasonable justification for the action taken by the appointing authority in the circumstances found by the Commission to have existed when the appointing authority made its decision." *Town of Watertown v. Arria*, 16 Mass. App. Ct. 331, 334, 451 N.E.2d 443, 445 (1983).

A. Limits on Evidence

Before addressing whether the evidence before me shows just cause for demotion, I examine first what testimony I may consider. Because the hearing is de novo, “[t]here is no limitation of evidence to that which was before the appointing officer.” *Sullivan*, 322 Mass. at 569, 78 N.E.2d at 620. Nonetheless, because the standard of review focuses on the circumstances existing at the time the appointing authority made its decision, a lack of evidence before the appointing authority may impact the appeal. For example, the appointing authority may make factual inferences against a civil service employee who declines to testify and this inference must be taken into account in a subsequent appeal. *Town of Falmouth v. Civil Service Comm.*, 447 Mass. 814, 826-827, 857 N.E.2d 1052, 1061 (2006).

Here, three categories of evidence submitted are questionable: Dave Mathey’s rebuttal testimony, testimony offered by the Town on incidents Townsley alleges that the appointing authority did not hear evidence, and Townsley’s testimony itself.

1. Mathey’s Testimony

Mathey’s testimony is the easiest to address. Some of Mathey’s testimony concerned his objections to Townsley’s performance as his captain. None of the incidents Mathey testified to concerning his interactions with Townsley were mentioned whatsoever in Mayor Forgey’s decision demoting Townsley or in hearing testimony by Fire Department management as grounds that were ever considered when evaluating Townsley’s performance. Because these aspects of Mathey’s testimony had no bearing on the decision to demote, I make no findings as to them and do not rely on them.

2. Evidence Presented to the Mayor

Townsley testified that certain of the incidents relied on by the Mayor in her demotion decision and on which the Town presented evidence at the hearing before me were not the subject of testimony before the Mayor. Townsley stated that no live testimony was presented at the Mayor's hearing on the allegations that he spoke without authorization to a reporter, failed to handle the fire dorm controversy adequately, failed to handle the dispute between firefighter Wholey and Captain Jarvis adequately, wore non-standard shoes, or failed to take a pager. Chief Cogswell and Deputy Chief Strahan testified at the Mayor's hearing, but there is nothing in the record that describes the subjects of their testimony.

The Mayor acknowledged that she made findings concerning transfers out of Townsley's group, although no evidence on this was presented to her. I have, consequently, made no findings about transfers or taken transfers into account in this decision.

I assume, however, that the Mayor's findings concerning the other matters that she addressed in her decision were based either on live testimony or on documentary evidence presented to her. The record reflects that she had before her Townsley's performance evaluation and a memo concerning his interactions with a reporter because she sent those documents to Townsley prior to the hearing. The evaluation discussed aspects of the fire dorm controversy explicitly and negatively evaluated Townsley's attitude toward the Department's standard operating procedures, which was one of the bases on which the Department objected to Townsley's handling of the confrontation between firefighter Wholey and Captain Jarvis. Although the record is not clear what evidence was presented to the Mayor on the allegations that Townsley wore non-standard shoes or failed to take a pager, Strahan drafted a memo concerning

the shoes a few weeks before the hearing, which is when the pager incident occurred as well, thus there is reason to believe that evidence concerning these contemporaneous events was presented to the Mayor.

3. Townsley's Testimony

As for Townsley's failure to testify at the Mayor's hearing on September 26, 2007, I note that he did testify at the earlier hearing on the boot purchase controversy, thus he presented evidence to the Mayor on his version of that event. While he did not testify at the later, more broad ranging hearing, he submitted documents and his counsel cross-examined witnesses. What documents he or the Fire Department submitted is unclear. But if the documents submitted to the Mayor paralleled the documents submitted to me, Townsley's version of many of the controversies is presented in some fashion in those documents.

Nonetheless, the Mayor testified that she would have preferred to have heard Townsley's testimony. I do not take her comment to mean that she necessarily inferred that he had no defense to the allegations raised against him, just that her evaluation was limited because she had heard only one side of the story. Given the Supreme Judicial Court's decision in *Town of Falmouth*, any limit the Mayor perceived in her ability to render a decision because of Townsley's failure to testify is one I must take into account when considering the merits of his appeal. Had his testimony before me presented any novel defenses or evidence that was not presented in some fashion to the Mayor, then I would not consider it. I do not find that to be the case, however.

B. Evaluation of the Evidence

Turning to the evaluation of the evidence to see if just cause exists for the decision to demote Townsley, I note that for all the testimony about numerous incidents involving Townsley, the Mayor's decision does not rest on any one incident or group of incidents *per se*, but rather on her overall evaluation of Townsley's performance as captain. As she stated in her decision:

All of this, much of it low level but exacerbating and annoying, evidence of an uncompromising attitude of disrespect toward departmental authority, is more than adequate justification for my finding that your behavior in general constitutes conduct unbecoming an officer, that despite reasonable efforts of correction your behavior continues, and that the recommendation of the Chief that you be reduced in rank is fully warranted.

Joint Ex. 28. I note as well that none of the criticism is of Townsley's performance at fires, but rather concerns his handling of his role in the Fire Department chain of command. Still, because the evidence concerns particular incidents, I address them first before considering what the evidence overall shows as to Townsley's performance as captain.

1. Evaluation of Individual Incidents

a. Conversation with Reporter

Some incidents are readily addressed. Townsley's conversation with a reporter about pending exam for fire chief was not shown to have violated any Fire Department Rule. Rule 5.05 limits firefighters from making statement to the press about the administration of the Department. All that was shown was that Townsley confirmed that he was studying for the fire chief's exam, something the reporter saw him doing. There was no evidence that Townsley knew how many other people had signed up for the exam or offered any information on that subject to the reporter. To the extent that a lack of candidates signing up for the exam affected the

administration of the Fire Department, the only suggestion that Townsley made any statement about too few candidates signing up came from the reporter telling Chief Cogswell that Townsley had told him as much. There is no evidence that Townsley actually did so, and it is just as likely that the reporter said this as an opening to try to get the Chief to confirm the lack of candidates.

b. Strategic Planning Meeting

Turning to the public meeting announcing the strategic plan for the Fire Department, it is undisputed that Townsley did not attend. While there is evidence that the Chief expected senior staff to attend, there is no evidence to show that Townsley instead went to a bar, as the Chief was told. I have no reason to doubt Townsley's longstanding denial or his explanation that he had a previous family engagement. What the evidence shows rather is a lack of communication.

While the Chief said he expected senior staff to attend, evidence is lacking as to what he actually communicated regarding his expectations about attending or telling him if a senior staff member would not be attending. The evidence shows that Townsley did not tell Chief Cogswell that he would be elsewhere and the Chief did not then ask Townsley why he had not been present, and as a consequence the situation festered.

c. Townsley's Shoes

As for the incident in which Townsley wore non-standard shoes, there is no dispute that for a time, Townsley wore shoes that were not the standard black dress shoes firefighters were expected to wear. There is also no dispute that he had a medical reason for doing so. Finally, there is no dispute that Townsley did not say anything to Deputy Chief Strahan about his foot problem until Strahan asked. While Strahan expected that a firefighter with a foot problem

would have told him about it, Strahan did not say on what he based this expectation. What the evidence establishes again is a lack of communication.

d. *Weingarten* Rights Incident

In the incident involving Deputy Chief Strahan's effort to speak to firefighter Lyford, the difficulty was created because Lyford believed Strahan may have been seeking to discipline him, and thus he invoked a right established by the Supreme Court to have a union representative present whenever management seeks to question an employee while investigating him for possible discipline. *See NLRB v. Weingarten*, 420 U.S. 252 (1975). When an employee properly invokes that right, management may not question him further until the union representative is present. *Id.*

The record shows that Lyford believed incorrectly that Strahan intended to discipline him. Instead, Strahan wished only to see if Lyford wanted the District Attorney's office to pursue charges for an injury he suffered while fighting an arson fire. Since it was Strahan who sought to speak to Lyford, the primary responsibility for clearing up the subject of the conversation was Strahan's. When Strahan failed to convince Lyford to speak to him, Townsley could have intervened, but did not. The evidence shows that by then, however, Lyford was determined not to speak to Strahan and would have been unwilling to be persuaded by Townsley to talk. The resolution ultimately achieved was proper: allowing the firefighter to speak to his union representative before agreeing to talk.

e. Pager Incident

The pager incident shows a continued deterioration in relations between Townsley and upper management once disciplinary proceedings had begun. While the record does not reflect

what if any communication there was between upper management and the rest of the Fire Department before management decided to hand out pagers to the firefighters, it shows how reluctant Townsley had become to go along with what appears to be a routine decision. Whether a firefighter would be liable for the cost should he lose his assigned pager is an issue that should have been readily resolvable.

f. Fire Dorm Incident

The remaining disputes present more complex issues. The fire dorm controversy focuses on Townsley's handling of personnel issues in his role as captain. The facts concerning how the controversy arose are not in dispute. The Fire Department adopted a standard operating procedure separating the living quarters of male and female firefighters. Subsequently, the Department's lone female firefighter at the time, Janet Wholey, and firefighter John Lyford wanted to share the west dorm. Because separate dorms was a Department wide policy, they sought an exception not from Captain Townsley, but from Chief Cogswell. Cogswell allowed the exception only so long as it was acceptable to Townsley, who allowed it only so long as no problem arose. When Wholey shortly thereafter discussed the situation with a firefighter from another community who told her the situation was unacceptable, she informed Townsley, and he did what he said he would do: he moved Lyford into a male dorm. So far, none of this reflects poorly on Townsley.

But problems arose thereafter. Although Lyford did not initially express dissatisfaction to Townsley, he was unhappy nonetheless with the decision to move him out of the west dorm. At least one firefighter, Dave Mathey, heard Lyford make snide remarks to Wholey, who later claimed that Lyford was harassing her. The record does not reflect exactly what Lyford said to

Wholey or where Townsley was at the time the remarks were made. Given the amount of time the group spent together each day and the possibility that problems within the unit might arise as an all male firefighting unit adjusted to the presence of the first female firefighter in the Department, Townsley likely should have been attuned to the possibility that the dorm situation would not resolve as easily as it seemed to at first. But there is no evidence that Townsley at this point knew that Lyford was saying anything untoward to Wholey. He said he had not heard any snide remarks, and neither did Strahan. I have no reason to doubt Townsley on this.

Neither of the only two firefighters known to have heard such remarks – Wholey and Mathey – brought them to Townsley's attention. Instead, Mathey spoke to Deputy Chief Strahan, which in turn led to the involvement of Chief Cogswell and the Town's human resources department. While under some circumstances, a captain might be criticized for failing to note or resolve a personnel matter before it came to the attention of upper management, the evidence fails to show that the fact that Strahan was alerted to the problem before Townsley reflects poorly on Townsley's leadership. Wholey, for unspecified reasons of her own, did not tell anyone until pressed later by Strahan. Whatever her reason, it was unlikely to have been a comment on Townsley's abilities as captain because later she immediately reported to Townsley her confrontation with Captain Jarvis. As for Mathey reporting to Strahan rather than Townsley, he made it clear that he had his own reasons for disrespecting Townsley's leadership, and thus chose to speak to Strahan not Townsley.

The problem with Townsley's leadership came thereafter. Chief Cogswell told Townsley that Wholey was alleging harassment and told him that he needed to address it. Townsley told the Chief that discipline was for the Chief to impose, not him. The record reflects that captains have

the authority and the responsibility to impose discipline and the responsibility to attempt to promote harmony within their groups. There is nothing in the record to show that Townsley made any effort, after he was informed about the problem between Lyford and Wholey, to do anything about it. How long the problem persisted is not entirely clear from the record, but at least from October 2006 to February 2007, as Lyford was communicating with the Town about the problem during that period. Thus, Townsley had ample time to take some steps to try to resolve the situation.

g. Roll Call Incident

The facts concerning what happened between Captains Townsley and Winn at roll call are difficult to sort out. What is clear is that it was Winn's responsibility as the officer of the new shift to call roll and excuse the former shift. He did not do that before 4:00 p.m. when his shift was supposed to start. Townsley thought he was excused and Winn thought he was not, and heated words were exchanged, some of which on Townsley's part criticized the relatively new roll call policy in some fashion. The dispute between the two captains concerned the mechanics of handling shift change under a relatively new roll call policy. Townsley had not attended the staff meeting at which this was discussed. The net result was that he ended up in a dispute with another captain that became so heated that the other captain asked Chief Cogswell to intervene.

h. Medical Emergency Response Controversy/Building Maintenance Supervisor Resignation

Similarly, the back and forth between Townsley and Chief Cogswell over the Fire Department's standard response to emergency medical calls related to a policy pronouncement that had previously been discussed at a staff meeting that Townsley did not attend. The merits of

the Department's emergency medical response policy are not before me. I note only that Captain Townsley, to the extent he believed that the policy created safety issues, acted appropriately by raising them.

The issues concerning his behavior arise only out of his response to Chief's Cogswell's denial of his request to change the policy and have a rescue vehicle respond to a medical emergency rather than a fire truck. The Department objects both to the vehemence of his response and to his airing of his objections in front of his group. As to the latter, in an organization the size of the Greenfield Fire Department, it may prove quite difficult in practice to keep disputes among the officers confined to staff meetings, as Department management desires, particularly when senior men attend those meetings and there are other avenues for the disputes to become widely known – such as the involvement of the union in safety issues, which was the case here. But there is a difference between a captain objecting to a policy decision and that objection simply becoming known and the captain publicly voicing that objection to his group once the policy decision has been made. There is at least some evidence that Townsley chose to tell his group his objections to the emergency medical response policy, and given the vehemence of his objection to the policy, it would be hard to believe that he did not voice his objections publicly.

That he nonetheless obeyed the standard operating procedure adopting the policy to which he objected is also clear from the evidence. Still, he took his objections a step further when he resigned as building and vehicle maintenance supervisor on the very same day that the Chief told him he was not going to change the policy. Although the position was voluntary and I credit that Townsley knew Chief Cogswell could readily replace him with another firefighter

qualified to perform the function, his resignation letter still is striking in assertion that he will “not be part of a team that is not making quality decision[s].” This demonstrated not only a rejection of one policy, but a rejection of the decision making process in the Fire Department and his own role in it.

h. Threat to Firefighter Incident

Townsley’s performance of his role came into question next in his handling of the dispute between firefighter Wholey and Captain Jarvis. The record establishes that Townsley acted properly after he received a phone call from Janet Wholey about her confrontation with Captain Jarvis. Since he was on vacation and in no position to act, he called the Chief and told him that Wholey had said that Jarvis had threatened her. Although later Wholey told Deputy Chief Strahan that Jarvis had not physically threatened her, but rather threatened her with discipline, I credit the Townsley accurately reported to Chief Cogswell his understanding of what Wholey had told him.

His later actions are more questionable. When Chief Cogswell was trying to straighten out the apparent differences between what Wholey told Townsley and what she told Strahan, Townsley declined to help address this personnel issue with a member of his group. He also told Chief Cogswell that he had told his group that any of them could walk away from a person in the Department who was yelling at them, no matter who it was. Although Strahan thought that this advice may have influenced Wholey’s decision to walk away from Captain Jarvis, I find no evidence that Wholey’s actions were anything but her own. Still, Townsley’s advice was on a matter that potentially concerned the whole Department, but he did not confer with management before making it and he stated a position that does not conform with Department management’s.

As far as I can tell, Cogswell and Townsley agree that if a firefighter is physically threatened by anyone, that firefighter may walk away from the threat, but the Chief thinks that if all that another captain is threatening is discipline, then the firefighter may not walk away from the captain, but must instead later raise any objections up the chain of command.

i. Boot Purchase Incident

Finally, I consider Townsley's actions respecting the purchase of boots. I find that he did not deliberately evade purchase limits imposed by the Town or the Department, but that he did not follow the purchase approval process that he should, as a captain, have been familiar with.

Townsley was aware of the basic requirement of Fire Department Rules that purchases receive pre-approval from the administration. Thus, when approached by a salesman from Station House Supply he sought out Diane Lively, the chief's assistant and a member of the administration, to obtain approval to purchase boots from that vendor. Although Townsley and Lively viewed their subsequent conversation differently – she seeing it as just a general approval to use this vendor for properly approved purchases and he seeing it as an approval to purchase boots – what is significant here is Townsley's perception because it is his actions that are in question. While Lively made clear that she does not have approval authority – any requests made to her must be approved by the Chief or the Deputy Chief – the record shows that it could well have appeared to Fire Department personnel, including captains, that she had more authority than that. Her memo on rubber and leather boots, her exchange with Townsley about firefighter Randall's boots, and her email describing purchase practices all have the tenor of someone with authority in this area. Her email is explicit in this regard, saying that one way to obtain purchase

approval is to talk to her. That she subsequently would have to convey that request to the Chief or the Deputy Chief does not diminish the apparent authority she had in the purchasing realm.

Furthermore, if there was any ambiguity in the conversation between Townsley and Lively, the memo she drafted that the Chief approved and Townsley subsequently posted in places easily seen in the firehouse dispelled any doubt that the Department would approve boot purchases. While the Town argues that the memo simply sets forth the general process for boot purchasing, the phrase "the Fire Department will provide all members with leather boots" suggests much more. It is written as if the Department is in the process of buying leather boots for those who need them. That memo combined with the boot display at the Department could reasonably have been viewed as meaning that the Department was in the process of making necessary boot purchases. The reasonableness of this interpretation was confirmed by the boot purchase made by another captain, Captain Tufano.

Even so, all the conversation with Lively and the memo could have given Townsley was a general authorization to go ahead and see who needed to purchase boots. There is no evidence that anyone authorized specific boot purchases or the total purchase amount before Townsley placed the order.

That Townsley nonetheless went ahead and made a substantial order for boots did not violate any requirement that a purchase order be obtained for purchases over \$100. This requirement was first conveyed at a staff meeting in March 2007 that Townsley attended and concerned a requirement of the Town's Accounting Department. The record shows that this Town-imposed limit on purchasing was lifted at the end of July 2007, before Townsley placed the order with Station House Supply. Although there is evidence that the Fire Department had

the authority to adopt this requirement as a Fire Department policy, there is no evidence that the Fire Department did so.

However, the Town required throughout this period that purchases of over \$1,000 be made only after a purchase order had been approved. Townsley ran afoul of this requirement, which he knew or should have known of, largely because he submitted the purchase request directly to Station House Supply, rather than submitting it to the Fire Department office. Had he done that latter, then the Chief could have approved or disapproved individual boot purchases (as subsequently happened) and a purchase order could have been prepared by the office. That he made the purchase directly is most likely tied to his experience as building and vehicle maintenance supervisor, in which role he made purchases directly. That does not excuse his failure to submit the purchase request to the office because he should have known that the purchases he made for the building work were covered by a blanket purchase order and that other large orders needed an individual purchase order.

2. Overall Evaluation

Before turning to whether the evidence overall shows that the Town had just cause to demote Captain Townsley, I note that one of the goals stated in the strategic plan was for the Fire Department to set aside "previous internal strife and disagreements." Joint Ex. 2. The evidence in this case shows numerous instances of communication breakdown and contentious relations, not all of which are Townsley's sole responsibility, that demonstrate that this goal has yet to be achieved.

Although I have found fewer instances of legitimate complaint about Townsley's behavior as captain than the Mayor did, I find that the evidence supports the Mayor's decision

that Townsley's overall performance is inconsistent with him remaining a captain. The evidence shows that Townsley failed to take as active a role in managing the human relations among his group that was expected of a captain. When difficult personnel issues presented themselves in the aftermath of the dorm dispute and the dispute about whether Captain Jarvis threatened firefighter Wholey, the evidence shows that Townsley simply ceased to be involved and made no further effort to resolve the disputes. He offered no real explanation of this aspect of his conduct either at the hearing before me or in his response to the specific personnel matters referenced in Chief Cogswell's evaluation of his performance.

The evidence also showed that his relations with those in the Department of equal or higher rank was contentious. He had heated exchanges with Captain Winn and Deputy Chief Strahan, and a dispute with Chief Cogswell about emergency response protocol that kept escalated throughout the course of a day. The Chief, although denying Townsley's request to change the new policy, gave him a chance to resolve the controversy gracefully by saying that a new approach could be adopted if Townsley would examine the ambulance the Department owned and see if it could be used to respond to medical emergencies. Instead, Townsley heated up the dispute by abruptly resigning from his position as building and vehicle maintenance supervisor and issuing a general condemnation of Department decision making.

Finally, the evidence shows that Townsley did not play the role expected by the Department of captains in the discussion and implementation of Department policies. Townsley's heated disputes with Captain Winn and Chief Cogswell, about the roll call policy and the emergency response policy respectively, arose in circumstances in which the Department had adopted policies at staff meetings that Townsley did not attend. While the record is not clear as to

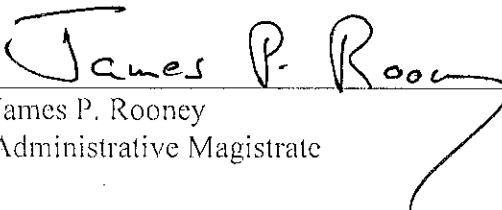
how many meetings Townsley missed, it is clear that he missed some of these meetings because he objected to being paid for attendance solely with compensatory time. The net result was that he did not have the opportunity to state his views before policies were adopted, and that he responded to his self-imposed exclusion from the decision making meetings in an overly contentious fashion after the policies had already been adopted. There is also some evidence that, although he implemented the emergency medical response policy, he told his group about his objections to it after the policy was adopted. Furthermore, there is evidence that he decided on his own how to behave in circumstances either governed by existing policies or that should have been clear to him were matters he needed to discuss with higher ranking officers. He told his group they could walk away from anyone who was yelling at them, including officers, without first discussing this with the Chief or Deputy Chief. He made a substantial boot purchase without conforming to the Town policy requiring purchase orders for purchases over \$1,000.

The Civil Service Commission (and DALA) is "not free to modify the penalty imposed by the town on the basis of essentially similar fact findings without an adequate explanation." *Town of Falmouth*, 447 Mass. at 824, 857 N.E.2d at 1059. While the facts I have found are to some degree different from the facts found by Mayor Forgey, they point in the same direction. They show that Townsley failed to fulfill responsibilities that he had as captain and that demotion to a position in which he would not have these responsibilities was the appropriate sanction. Townsley's response to the emergency medical response policy is illustrative of this. Because he could not tolerate what he perceived as bad decision-making by the Fire Department, he resigned as building and vehicle maintenance supervisor. While resignation is a traditional response to a decision that an employee in good conscience cannot implement, the resignation is not from an

ancillary position, but from the very position in which the employee would be asked to implement the objectionable decision.

Having concluded that the Town of Greenfield demonstrated that Michael Townsley failed to perform adequately as captain of the Greenfield Fire Department, I recommend that the Civil Service Commission affirm the action of the Town in demoting him from captain to private.

DIVISION OF ADMINISTRATIVE LAW APPEALS


James P. Rooney
Administrative Magistrate

Dated: January 26, 2010